

**CITY OF DULUTH**

Planning Division

411 W 1<sup>st</sup> St, Rm 208 \* Duluth, Minnesota 55802-1197

Phone: 218/730.5580 Fax: 218/723-3559

**STAFF REPORT**

|                             |                                     |                                 |                                |  |
|-----------------------------|-------------------------------------|---------------------------------|--------------------------------|--|
| <b>File Number</b>          | PL 14-177                           | <b>Contact</b>                  | Steven Robertson, 218 730 5295 |  |
| <b>Application Type</b>     | Vacation of Utility Easement        | <b>Planning Commission Date</b> | January 9, 2015                |  |
| <b>Deadline for Action</b>  | <b>Application Date</b>             | January 6, 2015                 | <b>60 Days</b>                 |  |
|                             | <b>Date Extension Letter Mailed</b> | December 29, 2014               | <b>120 Days</b>                |  |
| <b>Location of Subject</b>  | 2120 London Road                    |                                 |                                |  |
| <b>Applicant</b>            | Harbor Bay Real Estate Advisors     | <b>Contact</b>                  | Mark Bell                      |  |
| <b>Agent</b>                | John Erickson, DSGW                 | <b>Contact</b>                  | jerickson@dsgw.com             |  |
| <b>Legal Description</b>    | See attached                        |                                 |                                |  |
| <b>Site Visit Date</b>      | November 1, 2014                    | <b>Sign Notice Date</b>         | December 29, 2014              |  |
| <b>Neighbor Letter Date</b> | December 29, 2014                   | <b>Number of Letters Sent</b>   | 23                             |  |

**Proposal**

Applicant is proposing a vacation of an active utility easement. The easement is 400 feet by 20 feet and is located in the middle of Block 25 of Endion Division of Duluth. The easement is used by the City of Duluth and Minnesota Power.

|                | Current Zoning | Existing Land Use   | Future Land Use Map Designation |
|----------------|----------------|---------------------|---------------------------------|
| <b>Subject</b> | MU-C           | Commercial          | Central Business Secondary      |
| <b>North</b>   | MU-N           | Commercial          | Neighborhood Mixed Use          |
| <b>South</b>   | MU-C           | Residential, Vacant | Central Business Secondary      |
| <b>East</b>    | MU-N           | Commercial          | Central Business Secondary      |
| <b>West</b>    | F-2            | Commercial          | Neighborhood Mixed Use          |

**Summary of Code Requirements (reference section with a brief description):**

Vacation of public rights of way and/or easements require a Planning commission public hearing with a recommendation to City Council. City Council action is to approve or deny by resolution. Resolutions approving either a full or partial vacation require a 6/9's vote of the council.

Code requirements are found in UDC Section 50-37.6. The Planning Commission shall review the proposed vacation, and council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway, or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles or pedestrians or the efficient supply of utilities or public services in the city;
2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water;
3. Is not otherwise needed to promote the public health, safety or welfare of the citizens of Duluth.

III. B-1



**Comprehensive Plan Findings (Governing Principle and/or Policies) and Current History (if applicable):**

Future Land Use - Central Business Secondary: An area adjacent to and supporting the primary central business area or a stand-alone area providing a similar mix of destination land uses but at a lower intensity than the primary central business area. Includes mixed regional and neighborhood retail, employment centers, public spaces, medium density residential, and public parking. UDC 50-15.3 - MU-C Purpose: Established to provide for community and regional commercial development along commercial corridors and nodal centers. Intended non-residential uses include retail, lodging, service, and recreational facilities needed to support the community and region.

History: This property was rezoned from MU-B/MU-N to MU-C in April 2013. A MU-C Planning Review was approved at this same site by the Planning Commission earlier this year (PL 14-096) that involved two new restaurants (Burger King and Caribou Coffee). A second MU-C Planning Review was submitted for this site (by the same applicant as this vacation), and approved at the November 2014 Planning Commission meeting.

The vacation exhibit was reviewed and accepted as accurate by the City on January 6, 2015.

**Discussion (use numbered or bullet points; summarize and attach department, agency and citizen comments):**

- 1) Applicant is proposing a vacation of an active utility easement. The easement is 400 feet by 20 feet and is located in the middle of Block 25 of Endion Division of Duluth.
- 2) The applicant will relocate existing utilities at the applicant's expense. The applicant has submitted a draft Utility Relocation Plan (dated 12/9/14) that has been reviewed and approved by the City's Chief Engineer of Utilities. The applicant will relocate the utilities prior to the vacation resolution going before the City Council.
- 3) This vacation, if approved, will not deprive any currently platted lots of access to a public right of way. The vacation, if approved, is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles or pedestrians or the efficient supply of utilities or public services in the city (as long as the utilities are relocated per the Utility Relocation Plan); the easement is not and will not be needed to provide pedestrian or recreational access to the water; and the easement is not otherwise needed to promote the public health, safety or welfare of the citizens of Duluth.
- 4) No comments from the general public concerning the vacation. Minnesota Power has current utilities in alley to be vacated; they have requested that utility relocation or alteration associated with this vacation and rededication be paid for at the applicant's expense. They have asked the applicant pay the estimated relocation/alteration expenses before MN Power will relocate any of its line facilities. Neither the City (Engineering and Parks and Recreation) nor the Arrowhead Regional Development Commission believe that this utility easement is needed or useful for trail or pedestrian purposes.
- 5) Vacations typically lapse unless a plat showing the vacation is recorded with the county recorder within 90 days after final approval.

**Staff Recommendation (include Planning Commission findings, i.e., recommend to approve):**

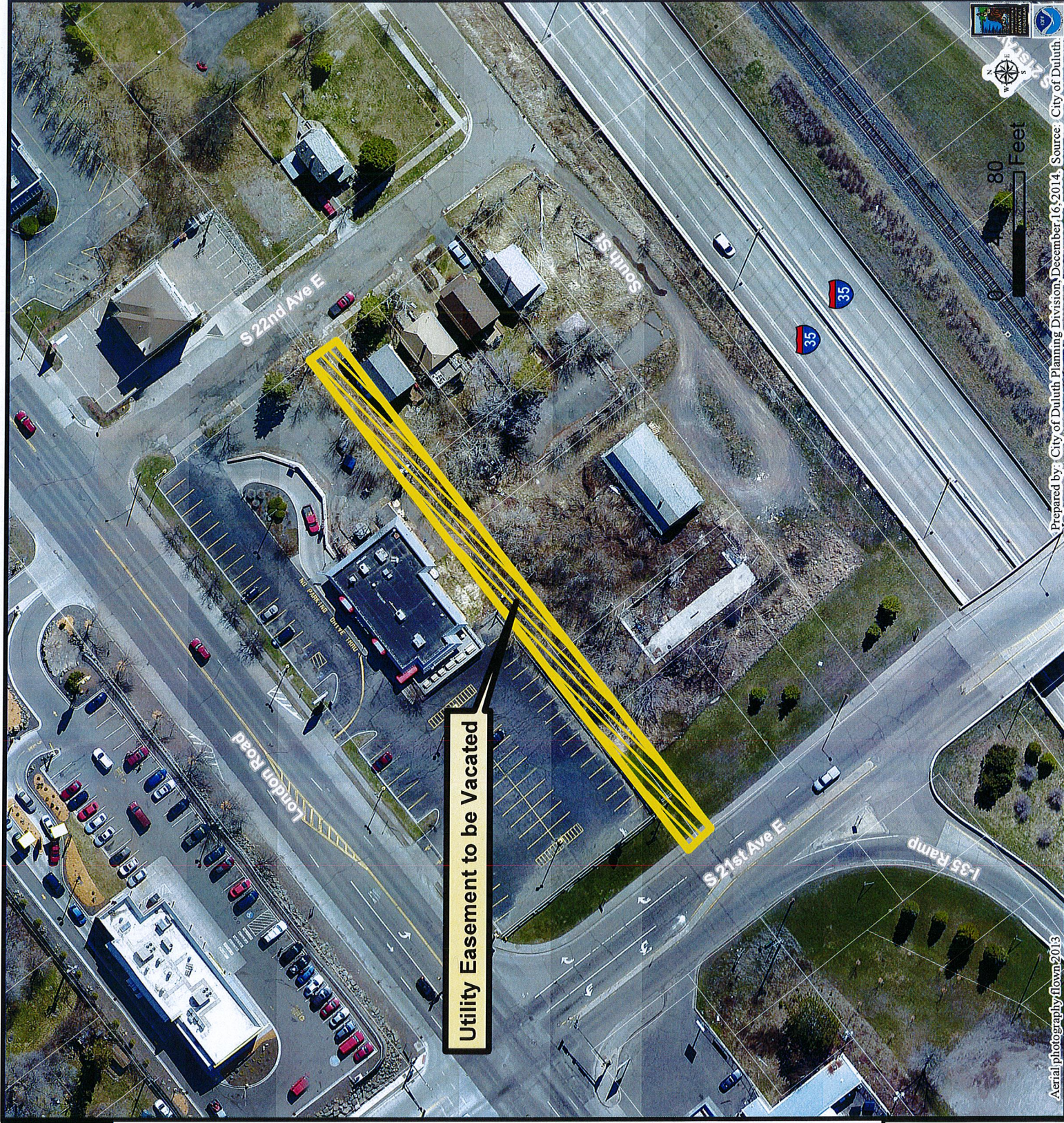
Based on the above findings, Staff recommends that Planning Commission recommend approval of the vacation, with the following conditions:

- 1) Utilities to be relocated, built to city standards, and accepted by the City, and as-built drawings of the utilities to be accepted by the City.
- 2) The vacation resolution will not be submitted to the City Council for consideration until all the items in condition #1 are met.

**Attachments (aerial photo with zoning; future land use map; site plan; copies of correspondence)**

B-2



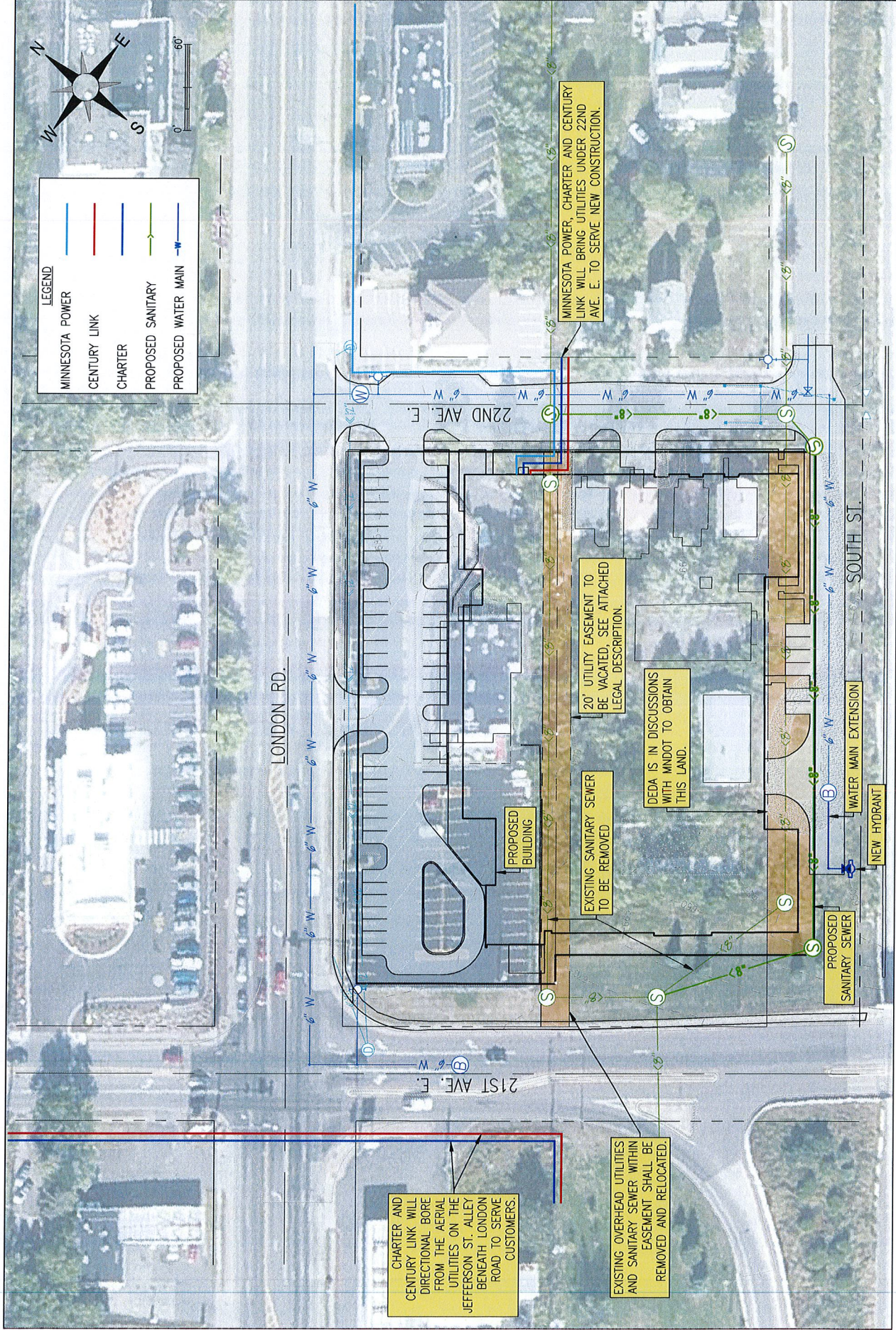


**Utility Easement to be Vacated**

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

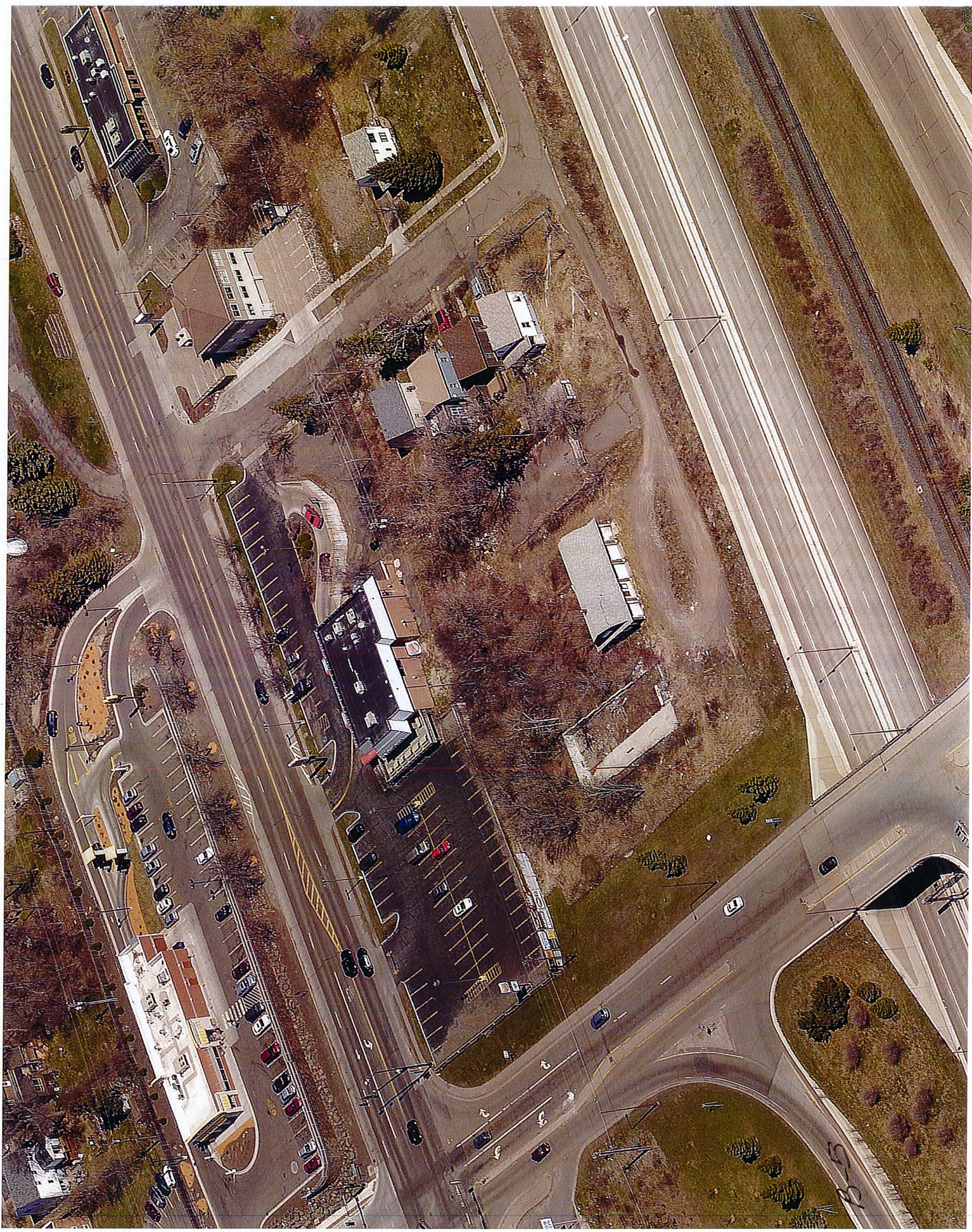
Aerial photography from 2013





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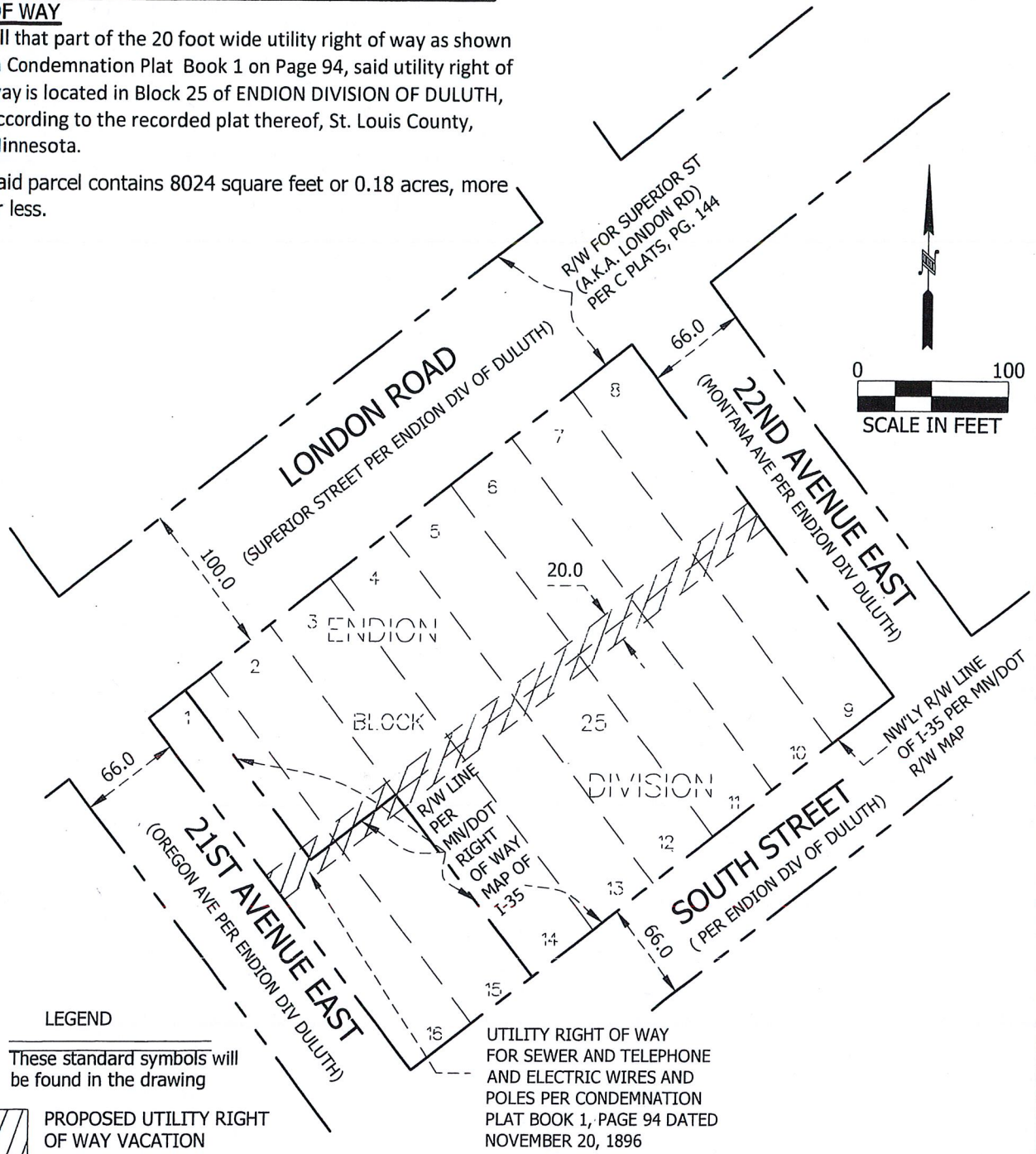




**LEGAL DESCRIPTION OF VACATION OF UTILITY RIGHT OF WAY**

All that part of the 20 foot wide utility right of way as shown in Condemnation Plat Book 1 on Page 94, said utility right of way is located in Block 25 of ENDION DIVISION OF DULUTH, according to the recorded plat thereof, St. Louis County, Minnesota.

Said parcel contains 8024 square feet or 0.18 acres, more or less.



**LEGEND**

These standard symbols will be found in the drawing



PROPOSED UTILITY RIGHT OF WAY VACATION

UTILITY RIGHT OF WAY FOR SEWER AND TELEPHONE AND ELECTRIC WIRES AND POLES PER CONDEMNATION PLAT BOOK 1, PAGE 94 DATED NOVEMBER 20, 1896

Approved by the City Engineer of the City of Duluth, MN. this 6 day of Jan 2015

By [Signature]

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Date: 12-08-2014

David R. Evanson  
David R. Evanson MN License No. 49505

**VACATION EXHIBIT FOR UTILITY RIGHT OF WAY**

CLIENT: **HARBOR BAY REAL ESTATE**

DATE: 12-08-2014

ADDRESS: XXX

JOB NUMBER: 14-487

REVISIONS: XXX

**ALTA**

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